

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYAN KEITH COX, a/k/a BRIAN KEITH COX,

Defendant-Appellant.

UNPUBLISHED

April 20, 1999

No. 203504

Kalamazoo Circuit Court

LC No. 94-000339 FH

Before: O'Connell, P.J. and Jansen and Collins, JJ.

MEMORANDUM.

Defendant claims an appeal from his sentences for his plea-based convictions of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). We affirm.

After withdrawing an earlier plea and failing to appear for trial, defendant pleaded guilty. At sentencing, the prosecutor sought to submit a report that refuted defendant's claim that he had surrendered to the police. Defendant disputed the accuracy of the report. The court declined to consider the information, stating that it considered defendant to be a fugitive at the time he was apprehended. The court concluded that substantial and compelling reasons did not exist to depart from the mandated minimum term of ten years for the narcotics offense. The court sentenced defendant to consecutive terms of ten to twenty years and one to five years in prison, with credit for 442 days.

A court may depart downward from a mandated minimum term if it finds on the record that substantial and compelling reasons exist to do so. MCL 333.7401(4); MSA 14.15(7401)(4). Substantial and compelling reasons must be objective and verifiable, and can be based on pre- or post-arrest conduct. *People v Fields*, 448 Mich 58, 76-78; 528 NW2d 176 (1995). Such factors include the circumstances that mitigate the defendant's culpability, and the defendant's age, prior record, and work history. *People v Shinholster*, 196 Mich App 531, 534; 493 NW2d 502 (1992). The determination whether factors constituted substantial and compelling reasons to depart from a minimum term is reviewed for an abuse of discretion. *Fields, supra* at 77-78.

While defendant initially cooperated in the prosecution of his codefendant, he ceased cooperating when he withdrew his plea. No circumstances mitigated defendant's culpability. Defendant was twenty-eight years old and had six prior convictions when he committed the instant offenses, and had a weak work history. The trial court's finding that no substantial and compelling reasons existed to depart downward from the mandated ten-year minimum term did not constitute an abuse of discretion.

The trial court did not consider disputed information in fashioning its sentencing decision. The court resolved the dispute by concluding that it would not consider the information. MCR 6.425(D)(3). The court indicated that it considered defendant a fugitive because he had failed to appear for trial. Resentencing is not required.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins